APPENDIX.

EXHIBIT A.

Order to Show Cause Why Writ of Mandamus Should Not Issue.

In the United States Court of Appeals, for the Ninth Circuit.

William G. Yax, Petitioner, vs. Thurmond Clarke, Respondent. No. 21271.

On consideration of the annexed petition of William G. Yax for a Writ of Mandamus against Thurmond Clarke, the respondent above named, the said petition for leave to file is hereby granted.

It is hereby ordered that Hon. Thurmond Clarke should show cause before this Court at 2 p.m. on the 3rd day of October, 1966, at the Court of Appeals Court Room, or as soon thereafter as counsel can be heard, why a Writ of Mandamus should not issue against him as prayed in such petition, and sufficient cause appearing therefor it is further ordered that in the meantime and pending the final disposition of said Petition for Mandamus by this Court the respondent be, and he hereby is, stayed from proceeding further in any manner with Civil Action No. 64-1064-TC, William G. Yax v. Polaroid Corporation, and that respondent shall not render his opinion in said case or, if said opinion has already been rendered, that said respondent shall not enter judgment in said case, until further order of this Court.

It is further ordered that service on or before the 16th day of September, 1966, of a copy of this Order to Show Cause, and a copy of the Petition for Writ of Mandamus, which petitioner has been granted leave to file, upon respondent Thurmond Clarke shall be deemed good and sufficient service thereof.

Dated Sept. 14, 1966.

/s/ Stanley M. Barnes
United States Circuit Judge

Order.

In the United States Court of Appeals, for the Ninth Circuit.

William G. Yax, Petitioner, vs. Thurmond Clarke, Respondent. No. 21,271.

Filed: Oct. 26, 1966.

Before: Barnes, Duniway and Ely, Circuit Judges.

Although timely demand had been made for a jury trial by petitioner here (plaintiff below) in a civil action entitled "William G. Yax v. Polaroid Corp.", No. 64-1064-TC, based on an alleged implied contract, after the denial of a motion for summary judgment on the ground issues of fact existed, the respondent district court judge ordered the *action* to be tried without a jury upon no expressed ground other than the fact that (a) defendant's witnesses were present and ready for trial; (b) that the defendant waived a jury; and (c) that the empaneling of a jury was inconvenient.[1]

In so ruling the trial court erred, and denied plaintiff below his constitutional right to a jury trial on an issue or issues of fact.

Plaintiff below sought of this court permission to file an order to show cause why a writ of mandamus should not issue against respondent, requiring the action to be tried before a jury.

A member of this panel issued the order to show cause and temporarily stayed further proceedings in the district court until the order to show cause could be heard and considered;

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[1]The court stated: "It is getting awfully hard to get jurors to come down here because of the fact there is no parking provided for them, whereas the County gives them more money and the County gives them parking." (C.T. p. 16.)

The matter was heard by the undersigned panel on October 3, 1966, at which time it heard oral argument, and it was stipulated (a) that the briefs then on file could be considered the briefs on file for and in opposition to the petition for a writ of mandamus; (b) that each side could file briefs on or before October 18, 1966, limited to the one question of whether the district court judge should be directed or required to transfer the case to another judge of that court; and (c) that the temporary stay was to continue in effect until this court acted;

Said additional briefs having been duly filed and considered by this court, and the matter having been considered;

It Is Hereby Ordered (1) that the petitioner is entitled to have a trial by jury of the issues of fact raised by this action; subject to the ordinary Rules of Federal Procedure which may be hereafter invoked by either party;

(2) that the respondent Hon. Thurmond Clarke is permanently enjoined from further proceeding with the trial of this action in any way, other than as hereinbelow specified;

(3) that the respondent Hon. Thurmond Clarke is instructed and required to forthwith transfer the pending action of *William G. Yax v. Polaroid Corp.*, No. 64-1064-TC, to some other judge of the United States District Court for the Central District of California for all further proceedings, including the trial thereof.

This order for reassignment is in no sense a suggestion that impugns the character or judgment of respondent, the Hon. Thurmond Clarke, but is to avoid placing him in an awkward position; and so as to observe, not only the fact, but the appearance of granting to the litigants an impartial tribunal for the settlement of their differences.

/s/ Stanley W. Barnes
/s/ Walter Ely
/s/ Ben Duniway
United States Circuit Judges

A TRUE COPY
ATTEST Oct. 26, 1966
Wm. B. Luck, Clerk

In the United States Court of Appeals, for the Ninth Circuit.

William G. Yax, Petitioner, v. Honorable Thurmond Clarke, Respondent. No. 21,271.

Before: Barnes, Duniway and Ely, Circuit Judges.

Respondent's petition for rehearing en banc is hereby denied.

Stanley N. Barnes
Ben C. Duniway
Walter Ely
Circuit Judges

Filed: Dec. 6, 1966.
Wm. B. Luck, Clerk.

EXHIBIT B.

Rule 39 F.R.C.P.

Trial by Jury or by the Court.

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

28 U.S.C. § 144. Bias or prejudice of judge.

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith. As amended May 24, 1949, c. 139, § 65, 63 Stat. 99.

28 U.S.C. § 1651. Writs.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. As amended May 24, 1949, c. 139, § 90, 63 Stat. 102.

Seventh Amendment to the United States Constitution:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."